

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN C. JONES and THE ESTATE OF
BARBARA SIMANDL,

Plaintiffs,

v.

BMO HARRIS BANK, N.A.,

Defendant.

OPINION AND ORDER

16-cv-414-wmc

Defendants BMO Financial Corp. a/k/a BMO Financial Group d/b/a BMO Private Bank and John Richardson filed a motion to dismiss plaintiffs Susan C. Jones and the Estate of Barbara Simandl on two related grounds. (Dkt. #4.) First, defendants argue that Richardson should not be named as a defendant at all, because he was simply acting within the scope of his employment, and therefore he cannot be held personally liable. (Defs.' Br. (dkt. #5) 1.) Indeed, in their notice of removal, defendants argue that Richardson was actually fraudulently joined to defeat diversity jurisdiction in the first place. (Not. of Removal (dkt. #1) ¶ 12.) Second, defendants contend that the only proper bank defendant here is BMO Harris Bank N.A. (*Id.* at 2.) Plaintiffs failed to file an opposition to the motion, implicitly acknowledging the merits of defendants' motion. As such, it is GRANTED.

Rather than dismissing this action, however, the court will instead dismiss the claims asserted against John Richardson and amend the caption to reflect that the proper defendant is BMO Harris Bank N.A., as shown above. Moreover, with the termination of Richardson as a party, the court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). Plaintiff Jones is a citizen of California; the Estate is a citizen of Wisconsin;

and defendant BMO Harris Bank is a citizen of the states of Delaware and Illinois.¹ The amount in controversy also exceeds \$75,000.

ORDER

IT IS ORDERED that:

- 1) Defendants' motion to dismiss the amended complaint (dkt. #4) is GRANTED.
- 2) Plaintiffs' claims against defendant John Richardson are dismissed with prejudice. The clerk of court is directed to terminate Richardson as a defendant.
- 3) The clerk of court is further directed to amend the caption to reflect that the proper name of the defendant is "BMO Harris Bank N.A." as shown above.
- 4) Defendant BMO Harris Bank has until August 10, 2016, to answer, move to dismiss or otherwise respond to the amended complaint, including in any such pleading a written affirmation of its place of incorporation and principal place of business.

Entered this 27th day of July, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

¹ In the notice of removal, defendants represent that BMO Financial Corp. is a "Delaware corporation with its principal place of business in Chicago, Illinois." (Not. of Removal (dkt. #1) ¶ 6.) The court understands that the proper defendant BMO Harris Bank N.A. is also a citizen of Delaware and Illinois. If that is not the case, defendants should advise the court immediately.